

228068

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

E.I. DUPONT DE NEMOURS AND COMPANY

Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY

Defendant.

Docket No. NOR 42125

**ANSWER**

Pursuant to 49 C.F.R. § 1111.4 and other applicable law and authority, Defendant Norfolk Southern Railway Company ("NS") respectfully submits this Answer to the Complaint filed by Complainant E.I. du Pont de Nemours and Company ("DuPont") in STB Docket No. 42125 on October 7, 2010 ("Complaint").

NS denies all of the allegations of the Complaint except where this Answer specifically states otherwise.

In response to the unnumbered paragraph on page 1 of the Complaint, NS denies that DuPont has paid or will pay common carrier rates in excess of reasonable maximum levels for NS's transportation of the movements set forth in the Complaint, denies that the Board has jurisdiction over all the issue movements, denies that DuPont has joined all necessary parties to this litigation, and denies that DuPont is entitled to any of the relief it seeks in this proceeding. The remainder of the unnumbered paragraph consists of a characterization of DuPont's Complaint, to which no response is required. To the extent that any such response is required, NS denies the remaining allegations of this paragraph.

With respect to the numbered paragraphs of the Complaint, NS responds as follows:

1. NS lacks sufficient information to admit or deny the allegations of Paragraph 1 of the Complaint. To the extent a response is required, NS denies the allegations of Paragraph 1.
2. NS admits the first two sentences of Paragraph 2 of the Complaint. With respect to the third sentence of Paragraph 2, NS admits that it is generally subject to the Interstate Commerce Commission Termination Act of 1995, and that some of its rates and practices are subject to the jurisdiction of the Board.
3. Paragraph 3 of the Complaint consists of a characterization of DuPont's Complaint, to which no response is required. To the extent a response is required, NS admits that the Complaint purports to challenge NS's rates for certain origin-destination pairs set forth in the Exhibits to the Complaint. NS denies that the Complaint accurately states NS's common carrier rates for all of the challenged movements and denies that the Board has jurisdiction to consider the reasonableness of NS's rates for all the challenged movements. To the extent a further response is required, NS denies the remaining allegations of Paragraph 3.
4. With respect to the allegations of Paragraph 4 of the Complaint, NS denies that it "transports" commodities for DuPont between all the points identified in Exhibit A, in part because several of the traffic lanes named in the complaint have moved no traffic in recent years. NS admits that it transports the identified commodities for DuPont between some of the origins and destinations named in Exhibit A. To the extent a further response is required, NS denies the allegations of Paragraph 4.

5. With respect to the allegations of Paragraph 5 of the Complaint, NS denies that it “transports” commodities for DuPont between all the points identified in Exhibit B, in part because several of the traffic lanes named in the complaint have moved no traffic in recent years. NS admits that it transports the identified commodities for DuPont between some of the origins and destinations named in Exhibit B. NS further notes that while the rates challenged in DuPont’s Exhibit B are Rule 11 rates for the NS segment of joint-line movements, DuPont has not alleged that it has contracts with the connecting carriers with those movements. If DuPont does not have such contracts, then NS denies that DuPont can only challenge rates for the NS segments of these movements. To the extent a further response is required, NS denies the allegations of Paragraph 5.

6. With respect to the allegations in the first sentence of Paragraph 6 of the Complaint, NS admits that prior to June 1, 2009 it transported the identified commodities for DuPont between some of the origins and destinations named in Exhibit A and Part 1 of Exhibit B. NS denies that it transported commodities for DuPont between all the points identified in Exhibit A and Part 1 of Exhibit B. NS denies that it published “private price lists” for DuPont, but admits that it established common carrier rates in NSRQ 65720 for the movements in Exhibit A and Part 1 of Exhibit B after the parties were unable to agree on new contract rates. NS denies DuPont’s allegations that the common carrier rates in NSRQ 64869 or NSRQ 65178 were established for DuPont after the parties were unable to agree on new contract rates. Both NSRQ 64869 and NSRQ 65178 are general mileage-based tariffs. Moreover, none of the rates DuPont lists in its Exhibits to the Complaint arise from NSRQ 64869.

7. With respect to the allegations in the first sentence of Paragraph 7 of the Complaint, NS admits that prior to June 15, 2010 it transported the identified commodities for

DuPont between some of the origins and destinations named in Exhibit A and Part 2 of Exhibit B. NS denies that it transported commodities for DuPont between all the points identified in Exhibit A and Part 2 of Exhibit B. NS denies that it published “private price lists” for DuPont, but admits that it established common carrier rates for the movements in Exhibit A and Part 2 of Exhibit B after the parties were unable to agree on new contract rates.

8. With respect to the allegations in Paragraph 8 of the Complaint, NS denies that it published “private price lists” for DuPont, but admits that it established common carrier rates for the movements in Part 3 of Exhibit B.

9. With respect to the allegations of Paragraph 9 of the Complaint, NS denies that the Complaint accurately states NS’s common carrier rates for all of the challenged movements. Furthermore, at this early stage of this case, NS lacks sufficient information to admit or deny DuPont’s allegations regarding R/VC ratios. To the extent a further response is required, NS denies the remaining allegations of Paragraph 9.

10. Paragraph 10 of the Complaint consists of a characterization of DuPont’s Complaint, to which no response is required. To the extent a response is required, NS admits that the Complaint purports to challenge NS’s rates for certain origin-destination pairs set forth in the Exhibits to the Complaint. NS denies that the Complaint accurately states NS’s common carrier rates for all of the challenged movements and denies that the Board has jurisdiction to consider the reasonableness of NS’s rates for all the challenged movements. To the extent a further response is required, NS denies the remaining allegations of Paragraph 10.

11. Paragraph 11 states a legal conclusion to which no response is required. To the extent a response is required, NS denies Paragraph 11.

12. Paragraph 12 states a legal conclusion to which no response is required. To the extent a response is required, NS states that at this early stage of this case, NS lacks sufficient information to admit or deny DuPont's allegations regarding R/VC ratios. To the extent a further response is required, NS denies Paragraph 12.

13. Paragraph 13 states a legal conclusion to which no response is required. To the extent a response is required, NS denies that it is the only rail carrier that provides service at either the origin or destination for all the challenged movements and denies that there is a lack of effective competition from non-rail modes for all the challenged movements.

14. Paragraph 14 states a legal conclusion to which no response is required;. To the extent a response is necessary, NS denies Paragraph 14.

15. Paragraph 15 states a legal conclusion to which no response is required;. To the extent a response is necessary, NS denies Paragraph 15.

16. Paragraph 16 states a legal conclusion to which no response is required;. To the extent a response is necessary, NS denies Paragraph 16.

17. Paragraph 17 states a legal conclusion to which no response is required.. To the extent that a response is necessary, NS denies Paragraph 17.

The unnumbered final paragraph of the Complaint (on pages 5 and 6) states legal conclusions and requests for relief to which no response is required. To the extent a response is deemed necessary, NS denies the allegations, conclusions, and requests for relief in that final paragraph, including clauses numbered 1 through 6, and denies that DuPont is entitled to any of the relief it seeks in this proceeding, or to any other relief.

Respectfully submitted,



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Dated: October 27; 2010

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of October, 2010, I caused a copy of the foregoing Answer of Norfolk Southern Railway Company to the Complaint of E.I. du Pont de Nemours and Company to be served on the following parties by first class mail, postage prepaid or more expeditious method of delivery:

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